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## Standard Services Agreement

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Tradegate Pty Ltd

ABN 56 003 861 201

# INTRODUCTION

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This document sets out the general terms and conditions that will apply to the relationship between You and us.

This document, the relevant Service Schedules and the Service Order Form will together form a Standard Service Agreement between us and You.

This agreement sets out the terms and conditions on which:

- We will provide the service to You; and
- You may use the service provided by us.

By signing the Service Order Form You agree to be bound by our Standard Services Agreement.

If there are any inconsistencies between the documents that form the Agreement between us, the order of precedence is these Terms and Conditions, the Service Schedule and then the Service Order Form.

This document is in the following parts:

<b>Section 1.</b>	<b>Dictionary</b> – an explanation of the words that have a special meaning in this Agreement
<b>Section 2.</b>	<b>General Terms and Conditions</b>
<b>Section 3.</b>	<b>Service Schedules</b>

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# SECTION 1 – DICTIONARY

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## 1.1 Definitions

**“we” or “us” or “Our Group”, “our” or “Tradegate”** means Tradegate Pty Ltd ABN 56 003 861 201 and/or its Related Bodies Corporate, as the case may be.

**“Customer” or “You” or “Your”** means Your business, as identified in the Service Order Form.

**“Agreement”** means these Terms and Conditions, the relevant Service Schedules and the Service Order Form.

**“Bundled Services”** means the combination of the services for which you pay a bundled Import Declaration Fee.

**“Business Day”** means any day excluding Saturday or Sunday or a bank or public holiday in Australia.

**“Charge” or “Charges”** means the charge or charges (exclusive of any taxes or duties) in respect of a Service as set out in the relevant Service Order Form or as otherwise set out in this Agreement, and includes any amounts invoiced for Services.

**“CMR Imports GO Live Date”** means the date Customs Imports CMR system begins receiving live messages.

**“Commencement Date”** means the date the Service Order Form is signed by You.

**“Confidential Information”** means information, whether oral, written or in electronic form, including but not limited to Your or any of our intellectual property not in the public domain, operational information, know-how and trade secrets, financial and commercial affairs, contracts, client information and pricing details.

**“Customs”** means Australian Customs Service

**“Equipment”** means either Our Equipment or the Purchased Equipment or both, as the context requires.

**“Force Majeure Event”** means an event or course beyond the reasonable control of the party claiming force majeure including, without limitation, acts of a third party network operator or supplier, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

**“GST”** means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 as amended.

**“Import Declaration Fee”** means the fee calculated at the sum of \$4.90 (as amended in accordance with clause 5.3 from time to time) per Successful Import Declaration.

**“Intellectual Property”** means any intellectual or industrial property anywhere in the world including, but not limited to, any copyright, patent, trademark, design rights, trade secret or Confidential Information relating to the Service or any licence or other right to use, or to be the registered proprietor of, any of the above.

**“Minimum Monthly Commitment”** means the minimum Successful Import Declarations required on a monthly basis to meet the minimum requirements for the Bundled Service, as outlined in the Tradegate Service Order Form.

**“Minimum Period”** means the minimum period for provision of a Service as set out in the Service Order Form.

**“Non-Bundled Service”** means a Service or combination of Services other than that combination for which you pay a bundled Import Declaration Fee.

**“Our Equipment”** means any equipment that we provide to You or our suppliers provide to us for re-supply to You as part of a Service under this Agreement but excluding the Purchased Equipment.

**“Our Network”** means the telecommunications network operated or controlled by us.

**“Personnel”** means a party's employee, sub-contractor or other representative.

**“Purchased Equipment”** means any equipment which You purchase from us under this Agreement.

**“Related Body Corporate”** has the meaning given in the Corporations Act (Cth) 2001.

**“Service” and “Services”** means the services and products set out in the relevant Service Order Form and further described in the relevant Service Schedule and includes both Bundled Services and Non-Bundled Service(s).

**“Service Levels”** means the levels of service (if any) in respect of a Service.

**“Service Schedule”** means a schedule to this Agreement which sets out, amongst other things, a description of the Service(s), any Services Levels and any other relevant information.

**“Service Order Form”** means our standard order for service or standard account application form, completed by You and us.

**“Successful Import Declaration”** means an import declaration for which we receive confirmation back from Customs to its successful lodgement status.

**“Terms and Conditions”** means the general terms and conditions set out in this document.

# SECTION 2 – GENERAL TERMS & CONDITIONS

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## 1 The Services

### 1.2 Installation and Commissioning

- (a) We will carry out any design, installation or commissioning works required (the "Works"), within the timeframe that we agree with You. This timeframe may be set out in the Service Order Form.
- (b) The Charges for any Works are based on the information You have provided us. If that information is inaccurate or an unforeseen event occurs, we may charge You for any additional cost incurred by us in completing the Works. Such additional cost will be agreed with You before being incurred.
- (c) You will provide us with reasonable access to Your premises and assistance from Your employees to allow us to carry out the Works.
- (d) You will provide us with information that we reasonably require to provision and supply the Services to You.

### 1.3 Provision of Services

- (a) In addition to any Service Levels, whenever we provide You with a Service, we will:
  - (i) provide the Service with care and skill;
  - (ii) begin providing the Service within a reasonable time and, in any event, by any connection date, installation date or other time set out in the relevant Service Order Form; and
  - (iii) ensure the Service substantially conforms to any specifications that we provide.
- (b) For specified Services, we will provide You with Service Levels. If applicable, these Service Levels, will be set out in the relevant Service Schedule provided to You with these Terms and Conditions. We may include in the Service Schedule the consequences of us failing to achieve the Service Levels. We advise You to read any consequences carefully, as they set out our only liability to You for failure to reach the Service Levels.
- (c) You acknowledge that our supplier, at the Commencement Date, has not authorised us to and will not offer or supply any other services not included in the Service Schedules.

### 1.4 Our Group

You should be aware that the Services may be provided by any member of Our Group or by our supplier, and, as such, any reference to, "we" or "us" in this document refers to whichever member or members of Our Group is providing the Services to You. Where this occurs, neither You nor we are relieved of our obligations under this Agreement.

## 2 Equipment

### 2.1 The Equipment

- (a) If required for a Service, we may supply Equipment to You. This Equipment may be Purchased Equipment (which You buy from us) or Our Equipment (which we provide to You for use during the duration of the Service).
- (b) You may request upgrades or new versions of Equipment and we will advise You of the availability and any additional costs associated with the upgrade or new version. You acknowledge that we are not obliged to provide You with any upgrades or new versions of Equipment, except to the extent that we are reasonably able to obtain such upgrade or new versions from our supplier.

### 2.2 Your obligations in Relation to Equipment

If we have provided any Equipment to You, then:

- (a) unless You subsequently purchase that Equipment, You acknowledge that title in Our Equipment will not, at any point vest in You and will remain with either us or our supplier as the case may be; and
- (b) You:
  - (i) will use Our Equipment only at the agreed site location and in accordance with agreed procedures and any directions we notify to You from time to time;
  - (ii) will arrange for Our Equipment to be installed in a suitable place;
  - (iii) will ensure that Our Equipment is not damaged and remains in good condition and You must notify us promptly on becoming aware of any damage to or malfunction of Our Equipment or that any of Our Equipment requires maintenance of any kind; and

- (iv) acknowledge that we may, subject to giving reasonable notice, and at our cost, change, modify, replace or remove Our Equipment in our absolute discretion, provided such change, modification, replacement or removal does not adversely affect our provision of the Services to You or Your ability to conduct Your business;
  - (v) will only permit Our Equipment to be repaired, serviced, moved or disconnected by us or our supplier or our authorised contractors unless we otherwise permit in writing;
  - (vi) will obtain our written approval prior to connecting or changing a connection to Our Equipment or Our Network;
  - (vii) will follow the reasonable directions of us, our supplier or our contractors and any direction from the manufacturer when connecting anything to Our Network or Our Equipment or otherwise operating Our Equipment, ensure it is installed to our specifications and complies with any applicable Australian standards and ensure that all equipment that you connect to Our Network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications Authority;
  - (viii) must never use the Equipment for purposes for which it is not designed; and
  - (ix) must pay our charges for repairing or replacing any part of Our Network or Our Equipment which was lost or damaged by you, or by anyone for whom you are responsible. If you become aware of any loss of, or damage to, Our Equipment, you must notify us immediately in writing. There is no charge where damage occurs through normal wear and tear.
- (c) Where third party equipment or network is used to provide the Service, you must comply with any requirements of such third party in relation to that equipment or network.
  - (d) We recommend that you arrange suitable insurance cover for any loss, damage or liability you may incur arising from this Agreement.

### **2.3 Title and Risk**

- (a) Ownership of Our Equipment remains with us or our suppliers (as the case may be). However, you assume all risks associated with Our Equipment from the date of delivery of Our Equipment to your premises.
- (b) You must protect Our (or our supplier's) title to Our Equipment by:
  - (i) not, without our prior written consent, removing or obscuring any identification marks on the Our Equipment;
  - (ii) complying with all reasonable instructions we give You to protect our (or our supplier's) ownership; and
  - (x) not entering into any agreement for the transfer, sale, mortgage, granting of any security interest or other dealing in connection with Our Equipment;
  - (xi) not parting with possession of Our Equipment except to provide it to us; and
  - (xii) returning Our Equipment to our possession as soon as practicable in accordance with any request by us to do so where Our Equipment is no longer used by You or this Agreement is terminated;
  - (xiii) protecting it from radio or electrical interference, power fluctuations, abnormal environmental conditions, theft and any other risks and ensure it is not damaged and remains in good condition; and
  - (iii) not doing anything or authorising anything to be done which might affect Tradegate's or its suppliers ownership.
- (c) You bear the risk of loss or damage to the Our Equipment while it is in Your possession or control (except as a result of a negligent act or omission of us or our Personnel, agents or suppliers) and You must indemnify us in respect of any such loss or damage.

### **2.4 Interference**

- (a) You will ensure that all equipment that You connect to the Our Network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications Authority;
- (b) You will ensure that Our Equipment, and any other equipment, facilities and connections which You use in connection with receiving the Service, is not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by personnel who are able to establish to Your reasonable satisfaction that they have been approved by us to perform the relevant work.
- (c) You are liable to pay us on demand any cost or expense incurred in repairing or replacing Our Equipment or other property owned by us, or for which we are liable, which is damaged or destroyed as a result of connection to a network other than Our Network.

### **2.5 Electricity and Environment**

You will make available an adequate power supply and environment (including air conditioning) for the operation of any of Our Equipment used in the provision of the Service at Your points of presence. Where Your point of presence is located inside a Tradegate controlled environment, Tradegate will make available an adequate power supply for the operation of Our Equipment.

## 2.6 Access

- (a) Subject to Tradegate's compliance with Your reasonable security and access requirements for Your premises You will:
- (i) give us or our nominee reasonable access to Our Equipment during normal business hours (or at such other times as we arrange with You) for among other reasons repairing, maintaining or developing Our Network or Our Equipment. This right of access will continue until all of Our Equipment is returned to us, even if the Agreement has been terminated; and
  - (ii) provide us or our nominee with full, free and safe access to the relevant premises if required for us or our nominee to repair or restore the Services or Our Network or exercise our rights under this Agreement or if required by our suppliers to repair and restore the Service or Our Network.

## 2.7 Equipment Fees

If any fee is payable for Your purchase of Equipment or use of Our Equipment, we will invoice You for that purchase or use. Unless otherwise specified on the invoices, You must pay such invoices with 7 days of the date on the relevant invoice by direct debit, cash or cheque and without set-off, counterclaim or deduction, payments by credit card may only be made with our prior written approval and will incur an additional 3% processing fee.

## 2.8 Repairing Faults

- (a) Subject to Your compliance with this Agreement and receipt of a fault notification from You in accordance with clause 2.9, we will arrange for the repair any fault in Our Network or Our Equipment which adversely affects the Service.
- (b) The Charges cover the cost of us repairing faults in the Service during our normal service hours of 08.00 to 18.00 (in the State from which the Service is provided) unless such faults are caused, or contributed to, by You or Your employees or contractors.
- (c) If You want us to investigate or repair any faults or defects not covered by the Charges then we may charge You additional charges for the work carried out. Such additional charges will be agreed with You before being incurred.
- (d) We may charge You, in accordance with our (or our supplier's technician's) standard time and material rates and terms, for any repair, maintenance or replacement of Our Equipment which is required due to events other than normal wear and tear, including but not limited to:
- (i) a Force Majeure Event, provided that the charge will be no more than the total cost for any such repair, maintenance or replacement of Our Equipment;
  - (ii) any negligent act or omission, or act of wilful damage or interference by a party other than us, our Personnel, suppliers or agents;
  - (iii) any failure or fluctuation of the electrical power supply to Our Equipment, or any external electromagnetic interference, or any failure of air conditioning and humidity control for Our Equipment;
  - (iv) any fault in equipment, software or any network unit which does not form part of Our Network;
  - (v) damage due to causes external to the facilities used by us or our supplier to provide the Service;
  - (vi) planned outages; or
  - (vii) the performance of maintenance service by a person other than Tradegate.

## 2.9 Fault Reporting

- (a) During the Term You must report any faults in accordance with the contact and escalation procedures detailed in the applicable Service Schedule or otherwise provided to You by us. You acknowledge and agree that we will only respond to faults reported in accordance with these procedures.
- (b) we reserve the right to charge You at its then commercial rates for fault restoration services if we respond to a request from You and we demonstrate that:
- (i) the failure to provide the Service to You was not due to a matter for which we are responsible; and
  - (ii) it would have been disclosed by a reasonable investigation by You.

## 2.10 Purchased Equipment

- (a) If required for the provision of the Service, we will sell to You the Purchased Equipment and in return, You will pay to us the charges set out in the applicable Service Order Form.
- (b) We will supply any Purchased Equipment to the location set out in the applicable Service Order Form or as we otherwise agree in writing.
- (c) Title to, and legal and beneficial ownership of, the Purchased Equipment remains with us until we have received in full the payment for the Purchased Equipment. Risk for damage to, or loss of, the Purchased Equipment passes to You on delivery of the Purchased Equipment to the location in the Service Order Form or as otherwise agreed.

(d) To the full extent permitted by law, we will make reasonable efforts to assign to You supplier warranties provided in respect of the Purchased Equipment but otherwise give no warranties regarding the Purchased Equipment.

### 3 Your Responsibilities

#### 3.1 General Responsibilities

Whenever we provide a Service to You, You will:

- ☎️ 1 comply with this Agreement;
- ☎️ 2 enter into a direct debit agreement with us, on terms satisfactory to us;
- ☎️ 3 adhere to our audit requirements, operational procedures and technical specifications and any other reasonable directions given by us in relation to Your obligations under this Agreement from time to time;
- ☎️ 4 provide us with all information, assistance and co-operation reasonably requested by us in order to enable us to meet our obligations under this Agreement or to any supplier or any other third party in relation to the Services, including without limitation, all information, assistance or co-operation required in relation to the resolution of any dispute between us and any supplier or any other third party in relation to the Services;
- ☎️ 5 not resupply the Service to anyone else without our prior written consent;
- ☎️ 6 follow our directions about the use of the Service;
- ☎️ 7 ensure that all information and data You give us is correct, current and complete;
- ☎️ 8 be solely liable for all information and data carried over Our Network or a third party network;
- ☎️ 9 use the Service in accordance with this Agreement and for lawful purposes and without being a nuisance to anyone;
- ☎️ 10 never interfere with the reasonable use of the Service by our other customers or use the Services in such a manner that could reasonably be expected to substantially impair the use of the Services by our other customers;
- ☎️ 11 be responsible for any of Your employees or other service providers who have access to the Service; and
- ☎️ 12 comply with the terms of this Agreement and all applicable laws, regulations, standards and codes.

### 4 Software

- (a) Where we provide You with any software to use subject to any express rights conferred by the Copyright Act 1968 (Cth):
  - (i) we remain the owner or licensee of the software;
  - (ii) You may use the software only for the purposes for which it is provided;
  - (iii) Your right to use the software may not be assigned or otherwise transferred to anyone else without our prior written consent;
  - (iv) You will not change or interfere with the software in any way;
  - (v) You will not use the software to recreate or reverse engineer any source code;
  - (vi) You will not copy any part of the software except for the purposes of our approved backup or testing procedures; and
  - (vii) You will comply with any further requirements we impose in relation to the software or where relevant, any requirements of the owner or licensor of the software.
- (b) We may at any time install upgrades or new versions of the software.

### 5 Charges & Invoices

#### 5.1 Our Fees

- (a) You agree to pay all Charges and invoices in accordance with this Agreement.
- (b) Prior to completion of the Imports CMR (currently scheduled for 22 July 2005), notwithstanding anything to the contrary contained on the relevant invoice, You agree to pay the Charges for Bundled Services by direct debit, in accordance with the same method required for payment of Non-Bundled Services Charges, as set out in clause 5.5 of this Agreement.

#### 5.2 Bundled Services Charge

- (a) Subject to clause 5.4, the total monthly charge for Bundled Services supplied by us to You in accordance with these Terms and Conditions is the greater of:
  - (i) the Minimum Monthly Commitment; or
  - (ii) the Import Declaration Fee

### 5.3 Changes to the Import Declaration Fee


We may change the formula for calculating the Import Declaration Fee by giving You not less than 7 days notice.

### 5.4 Minimum Monthly Commitment

(a) You agree that on a monthly basis, where the Import Declaration Fee falls below the Minimum Monthly Commitment required for that level of Bundled Service, we will invoice to You the difference between the Import Declaration Fee, and the Minimum Monthly Commitment required for that level of Bundled Service.


(b) You agree to pay any invoice You receive from us for the difference between the Import Declaration Fee and the Minimum Monthly Commitment amount, via direct debit at the end of each month within 3 days from the invoice date.

### 5.5 Payment of Bundled Services Charge


 We will invoice You for Bundled Services by providing You with an electronic invoice for the Import Declaration fee at the time we are notified of Successful Import Declaration Lodgement (the "Bundled Service Invoice");

- (i) You agree to pay the Bundled Service Invoice by direct debit in accordance with Your direct debit agreement with Tradegate;
- (ii) We will process a direct debit payment for all Invoices, excluding Import Declaration Invoices 3 business days from the date of the invoice;
- (iii) Bundled Service Invoice payments that fall due on a day on which we are unable to process a direct debit payment will be paid on the next Business Day; and
- (iv) Any direct debit payment made by You that dishonours will incur a fee payable by You of \$45.00.

### 5.6 Payment of Non-Bundled Services

 Except as otherwise provided for by clause 5.1(b), where You acquire Non-Bundled Services from us, we will invoice You for those Services on a monthly basis ("Non-Bundled Services Invoice").

 You agree to pay Non-Bundled Services Invoices within 7 days of the date set out on those invoices.

 You must pay all amounts owing by You for Non-Bundled Services under this Agreement by direct debit, cash or cheque and without set-off, counterclaim or deduction. Payments by credit card may only be made with our prior written approval and will incur an additional 3% processing fee.

### 5.7 Other Charges

(a) Where any fee or charge other than a Charge for Services is payable by You for Works, Equipment, Equipment maintenance or repair or any other service or product provided by us or our Personnel, agent or supplier to You, we will invoice you for that fee or charge.

(b) Unless otherwise specified on the invoice or otherwise provided by these Terms and Conditions, You must pay the invoice within 7 days of the date of the relevant invoice by direct debit, cash or cheque and without set-off, counter-claim or deduction. Payments by credit card may only be made with our prior approval and will incur one additional 3% processing fee.

### 5.8 Invoicing

(a) If You do not pay an invoice by the due date for payment, You will be in default and we may charge You a default charge on the unpaid amount on a daily basis from the due date until payment is made at the rate of no more than 3% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month of that date.

(b) If You consider there is a mistake in any invoice, You must notify us within a reasonable time of receipt of the invoice with full details. We will investigate the matter and report back to You as soon as practicable. If the matter cannot be resolved, the procedure under clause 11 must be followed. If we have made a mistake, we will adjust a later invoice or issue a credit note.

(c) Where You receive the Service from more than one member of Our Group, then in some cases, each member may bill You individually for the Service provided and You must make payment to the bill issuer.

(d) A member of Our Group which has agreed to provide You with a Service may delegate the invoicing for that Service to another member of Our Group. If this happens You agree that You will pay the invoices in accordance with the terms of this Agreement as if they had been received from the member of Our Group which is providing You with the Service.

(e) We may require You to lodge some form of security as a condition of us providing the Service to You. We may also set a spend limit for the provision of Service to You from time to time, as notified to You.

### 5.9 Changes to Charges

(a) We may vary Charges for Services, with Your prior written consent, if:

- (i) we continue to provide the Service after the end of any Minimum Period; or
- (ii) You have requested a change to the Service to be provided and we have agreed in writing to that change.

(b) We may vary the Charges at any time if there is an increase in the amount we must pay to any other network operator or any of our suppliers in providing the Service to You, where such variation is required, we will give You not less than 7 days' notice.

## 5.10 Cancellation Charges

- (a) You will be liable to pay cancellation charges if:
  - (i) You terminate a Service before the end of the Minimum Period other than in accordance with 13.3(a)(i) or 13.3(a)(ii); or
  - (ii) we terminate this Agreement prior to the end of the Minimum Period in accordance with 13.3(a) (ii) or 13.3(b).
- (b) The cancellation charges are:
  - (i) the greater of:
    - (A) the amount of Charges which would have been payable by You from the date of termination to the end of the Minimum Period; or
    - (B) the sum of: (i) the unamortised costs we have incurred in provisioning the Service; (ii) any further costs that we will incur in connection with the Service to the extent that we are unable to avoid such costs; and (iii) an amount equal to 25% of Your average actual monthly spend on the cancelled Service as billed by us in the 3 months (or part thereof) immediately preceding the month in which termination occurred, multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Period; and
  - (ii) **reimbursement to us of any rebates, credits, refunds or discounts, including but not limited to volume rebates, loyalty discounts and service credits on the full amount of our standard charges, provided to You during the Agreement.**
- (c) You agree that the cancellation charges are a reasonable estimate of our likely financial loss if the Service is terminated early.
- (d) We may invoice You for all or part of any cancellation charge payable under this clause 3.9. You will pay the invoice specifying the cancellation charges, by the date on the invoice and if no date is specified, then 30 days after the date of the invoice.

## 5.11 GST

Unless otherwise expressly stated, the Charges are exclusive of GST. You must pay to us, in addition to the Charges, an amount equal to any GST payable on the supply of the Service. That additional amount is payable at the same time as any part of the Charges is payable. We will issue a tax invoice to You for the supply of the Service at or before that time.

## 6 Service Disruption

- (a) Some Services may be affected by Your levels of use, the levels of use of other users and of facilities used to provide the Service. For this reason, we do not warrant that Services will be free of blockages, delays or faults of any kind.
- (b) We may temporarily suspend or restrict any Service:
  - (i) during any scheduled or agreed maintenance period;
  - (ii) if we or our supplier thinks it is reasonable or necessary to carry out urgent repairs to Our Network or Our Equipment;
  - (iii) in order to comply with any applicable law or an order or request of any government or regulatory body; or
  - (iv) where the Service is affected by events beyond our reasonable control.
- (c) Unless otherwise stated in a Service Schedule we will:
  - (i) give You at least three days notice of scheduled maintenance that is likely to affect Your Service; and
  - (ii) not carry out any scheduled maintenance between 08.00 – 18.00 unless we agree this with You first.

## 7 Liability & Indemnity

- (a) You indemnify us, and will keep us fully indemnified, from and against any losses, damages, costs or expenses (including legal costs assessed on a solicitor client basis) which we may suffer or incur arising out of or in connection with an action or claim brought by a third party against us which relates to Your (or Your Personnel's) use of the Services including, without limitation, as a result of:
  - (i) the transmission of any illegal, fraudulent or offensive material by You (or Your Personnel);
  - (ii) any breach of the Agreement by You; or

(iii) any wilful, unlawful or negligent act or omission of You (or Your Personnel).

(b) We do not, nor does our supplier, warrant that the Services will be free of interruptions, delays, faults or errors. Neither we, nor our supplier will not responsible for any loss or damage to Your business which may result from any interruptions, delays, faults or errors in the supply of the Services.

(c) All terms, conditions or warranties which may be implied into this Agreement, statutory or otherwise, relating to the provision by us of the Services are excluded to the fullest extent permitted by law.

(d) Our liability for breach of any term, condition or warranty or under any remedy implied by law (which cannot be excluded) will be:

(i) limited (if permitted by law) at our option to the repair or re-supply of Equipment or Services or the payment of the cost of having the Equipment or Services re-supplied; and

(ii) reduced to the extent that such liability is caused by Your negligent acts or omissions, or a breach by You of the terms of this Agreement.

(e) Neither we, nor our supplier will have any liability to You or to any other person for:

(i) the acts or omissions of any third party, including the suppliers which have been engaged by us for the purpose of supplying or maintaining a Service supplied to You under this Agreement;

(ii) faults or defects in Services which are caused by Your own conduct or misuse or the conduct or misuse of Your Personnel;

(iii) faults or defects that arise in telecommunication services provided to You other than under this Agreement (even if they are connected with our consent to Services which we have arranged under this Agreement);

(iv) any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss whether in respect of negligence or other tort, breach of contract, equity or otherwise, arising out of or in connection with the provision of the Services or this Agreement;

(v) faults or defects in the Services that arise due to equipment or cabling owned or leased by You, or otherwise in Your control; or

(vi) faults or defects in the Services that arise due to failure by You or any third party (other than a contractor or agent engaged by us) to appropriately maintain any equipment relevant to the supply of the Services.

(f) Our fault restoration obligations do not extend to faults caused as a result of:

(i) any fault in equipment, software or any network unit which does not form part of the network owned by us;

(ii) damage due to causes external to the facilities used by us to provide the Service;

(iii) interference;

(iv) a Force Majeure event; and

(v) planned outages.

(g) Where either You or us (including our Related Bodies Corporate) is liable to pay the other any damages, refunds, rebates or other compensation under this Agreement ("Compensation") the following applies, to the extent permitted by law:

(i) subject to clause 1.3, the maximum combined amount of Compensation Our Group will have to pay You, and anyone else who uses any Services provided to You, is the sum of the Charges paid or payable by You in the 12 month period preceding the date of the event that gave rise to the claim;

(ii) the maximum amount of Compensation You will have to pay us is the sum of the Charges paid or payable by You in the 12 month period preceding the date of the event that gave rise to the claim, save in respect of outstanding Charges (including any cancellation charges), where Your maximum liability will be the sum of all Charges payable by You under this Agreement;

(iii) both You and we will not be liable in any way for any loss of profit, loss of savings or data or for any indirect or consequential loss, including any losses that may reasonably be supposed to have been in the contemplation of the parties (as at the date of the first supply of the Services) as a probable result of any act or omission, arising out of or in connection with the supply of any Services or any equipment under this Agreement or otherwise in connection with the relationship established by this Agreement, including any loss or damage caused by our negligence or any fundamental breach of this Agreement;



(iv) the amount of Compensation that either of us has to pay the other will be reduced to that the event giving rise to the obligation to pay Compensation has been caused or contributed to by the other.



## 8 Force Majeure Event



Neither of us will be liable for failing to meet our responsibilities under this Agreement (except Your obligation to pay the Charges for Services You have received) because of a Force Majeure Event.



## 9 Warranties



You represent and warrant that:



  You are duly incorporated under the jurisdiction of Your incorporation, with all requisite corporate power and authority to own, lease and operate its assets and carry on Your business as now being owned, leased, operated and conducted; and



  You have full power and all necessary rights to enter into this Agreement and to perform Your obligations according to the terms of this Agreement; and



  You have full power and all necessary rights to enter into this Agreement and to perform Your obligations according to the terms of this Agreement; and



  You have full power and all necessary rights to enter into this Agreement and to perform Your obligations according to the terms of this Agreement; and

  none of the following has occurred and is subsisting, or is threatened, in relation to You:

  the appointment of an administrator.

  any step taken (including without limitation, an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting) for:

  Your winding up, dissolution, or administration, or

  You entering into an arrangement, compromise or composition with or assignment for the benefit of Your creditors or a class of them.



  You:



(A) being (or taken to be under applicable legislation) unable to pay Your debts, other than as the result of a failure to pay or a debt or claim the subject of a good faith dispute; or



(B) stopping or suspending, or threatening to stop or suspend, payment of all or a class of Your debts.



(C) the appointment of a receiver, receiver and manager, administrator, receiver or similar officer to any of Your assets and undertakings.

## 10 Intellectual Property

  Any Intellectual Property owned by either of us or any third party prior to entry into the Agreement, or developed independently of this Agreement by either of us or any third party, will continue to be owned by You or us or a relevant third party, as the case may be.

  We either own the Intellectual Property in the Service provided to You, or where we use any Intellectual Property belonging to anyone else, we have a licence to do so.

  You acknowledge that none of our Intellectual Property is transferred to You. You further acknowledge that unless specifically authorised by this Agreement, You cannot, and will not, use or reproduce such Intellectual Property for any purpose outside this Agreement.

  All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the time we are providing the Service to You, belongs to us.

## 11 Information

### 11.1 Confidential Information

(a) You and we must always keep each others Confidential Information confidential.

(b) We both agree:

(i) to use the Confidential Information of the other only to the extent required for the purpose it was provided;

(ii) not to copy or reproduce any of the Confidential Information of the other in any way; and

(iii) to disclose the other's Confidential Information only to employees and contractors who need access to the information and who have agreed to keep it confidential.

(c) You or we must promptly return all Confidential Information of the other (including any copies of it) in our possession or control, at the other's request.

(d) You and we agree that Confidential Information excludes information generally available in the public domain (without unauthorised disclosure under this Agreement) and excludes information received from a third party entitled to disclose it.

## 11.2 Personal Information

☎️📄 During Your relationship with us, we may collect information from You or from a credit provider or credit reporting agency ("Personal Information").

☎️🗣️ You agree that we may:

- (i) hold the Personal Information and share it with our employees, contractors and other agents or where relevant other credit providers but only where this is necessary to enable us to provide You with the Services, send You bills, check Your creditworthiness, check that Your responsibilities are being met, or otherwise to administer and enforce this Agreement. If this Personal Information is not provided to us, we may be unable to provide the Service to You;
- (ii) share with other network operators any information needed to provide certain services to You, or to enable You to send or receive messages of any kind through those networks; and
- (iii) use any information about You for statistical purposes, so long as You are not identified.

☎️📄 We, like other suppliers, are required by law to provide Your name, address, service numbers and other public number customer details to a database known as the IPND. This applies to all customers, including unlisted customers. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact us if You wish to have Your IPND data altered in any way.

## 11.3 Electronic Addresses, Numbers and Other Codes

- (a) We will arrange for appropriate electronic addresses, numbers and other codes to be allocated for You to use depending on the kinds of services You require.
- (b) Subject to any third party agreements to which we are a party (eg portability agreements), all addresses, numbers and other codes allocated to You remain the property of us or other members of Our Group. For that reason, You may not sell or give them to anyone else.
- (c) If it is necessary to do so, we may, by giving You one months notice, change or replace any electronic address, number or other code allocated to You.

## 12 Resolving Disagreements

- (a) Where a dispute arises between us, it will be referred to our [account manager] and Your contract representative for resolution.
- (b) If they cannot resolve the dispute within 10 Business Days, either of us may escalate the dispute to our respective [group managers].
- (c) If the dispute is not resolved within 10 Business Days of escalation to our respective [group managers], then either of us may take such action or proceedings as we see fit.

## 13 Term & Termination

### 13.1 Term

This Agreement:

- (a) starts the earlier of when You sign the Service Order Form, or when You first access our Services after receipt of these Terms and Conditions; and
- (b) remains in effect for the Minimum Period.

### 13.2 Term of Individual Services

Each individual Service will remain in effect for the Minimum Period and unless otherwise stated in the applicable Service Schedule will be automatically renewed for successive periods of 12 months each (Further Period) unless and until terminated by either party in accordance with this clause 13:

### 13.3 Termination

- (a) **Either of us may terminate this Agreement:**
  - (i) by giving to the other party written notice of termination not less than 90 calendar days prior to the expiry of the minimum period or Further Period;
  - (ii) on written notice where the other has materially breached this Agreement and has failed to remedy the breach within 20 Business Days of receipt of written notice from You or us, as the case may be; or
  - (iii) where a liquidator, receiver, manager and receiver or any other administrator is appointed over the assets of the business of the other, or if the other enters into any composition with its creditors.

- (b) **If:**
- (i) we reasonably determine that You have failed our credit check requirements or that You are no longer credit worthy; or
  - (ii) we are required to do so to comply with any law, to protect any person, Equipment or Our Network or to attend to any emergency; or
  - (iii) a Force Majeure Event prevents either party from performing all or substantially all of its obligations under this Agreement (other than an obligation to pay money) for a period exceeding 2 months,

then we may in our absolute discretion, without further notice to You, and without prejudice to our other rights and remedies, cease supplying any Service temporarily or permanently without giving You prior notice.

(c) Without prejudice to our other rights and remedies, if any of the matters listed in paragraph (b) occur, we may also immediately suspend, limit or terminate this Agreement by notice in writing to You.

- (d) **If:**
- (i) we are unable to supply or continue to supply You with the Services due to the cancellation, suspension or termination of any agreement with our suppliers, for whatever reason; or
  - (ii) we are unable to supply or continue to supply You with the Services for whatever reason including due to geographical coverage, capacity or technical capability limitations,

then we may in our absolute discretion, upon giving You as much notice as is reasonably possible in the circumstances, cease supplying any affected Services temporarily or permanently, suspend, limit or terminate this Agreement.

### **13.4 Suspension Rights**

In addition to our termination rights set out in this clause 13, if You are in material breach of this Agreement (including by non-payment of our Charges when due), we have the right to suspend performance of any or all of our obligations under the Agreement until such time as that material breach is remedied.

## **14 Effect of Termination**

### **14.1 Unpaid Sums**

On termination of this Agreement, all unpaid sums owing by each party will immediately become due and payable to the other party, and the party owing any money not paid immediately will be liable to reimburse the other party for all reasonable legal costs and disbursements incurred by the other party in the recovery of such sums.

### **14.2 Return of business manuals and other materials**

On termination of this Agreement, You must immediately return to us all Confidential Information of Tradegate including but not limited to any business manuals and any other materials in any form furnished to You by Tradegate relating to Tradegate or to our supplier or to the Tradegate products or Service.

### **14.3 Recovery of Our Equipment**

- (a) On termination of this Agreement, we may reclaim Our Equipment after giving You written notice.
- (b) If, following 30 days from the date of termination of this Agreement, You fail to return Our Equipment, or refuse to allow us to recover Our Equipment, You agree that, as Your agent only in relation to this clause, we may enter any premises where we believe Our Equipment may be located during normal business hours to recover Our Equipment.
- (c) Provided we act with reasonable care, You must pay us for any costs incurred (including but not limited to legal costs on a solicitor-client basis) in us exercising our rights under clause (b).
- (d) You will allow us to, and where applicable, will ensure that Your landlord or any other relevant third party allows us to, enter and remove Our Equipment from Your premises upon expiry or termination of this Agreement.

## **15 Survival**

Clauses 2, 3, 4, 5, 7, 12, 14, 15 and 18 survive termination of this Agreement.

## **16 Notices & Invoices**

- (a) All notices and invoices must be in writing and may be sent by letter, fax or e-mail to the address and contact person on the front of Service Order Form, as updated to each other from time to time.

(b) Any notice or invoice sent by post to that contact address will be assumed to have been delivered 2 Business Days after it is posted. Any notice sent by fax to that contact number will be assumed to have been delivered once a correct transmission confirmation slip is received.

## 17 Variation

We may, with reasonable notice to You, vary any term of this Agreement, including any amendments to the Service Schedules at any time in writing. To the extent required by the Act and any other applicable laws or determinations made by the ACA, we will notify You of any such variation.

## 18 General

- (a) You and we will comply with each others reasonable requirements for security and health and safety when working at each other's premises. Where practical, these requirements will be communicated to each other in writing.
- (b) You cannot assign Your rights and responsibilities under this Agreement without our prior written consent.
- (c) We may have subcontractors or other agents meet any of our responsibilities under the Agreement but we will remain liable to You for meeting all those responsibilities
- (d) No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by this Agreement.
- (e) [The Agreement is the entire agreement between You and us in relation to its subject matter.]
- (f) You agree that You enter into this Agreement entirely on the basis of Your own enquiries and that You do not rely on any statement, representation or promise by us that is not expressly set out in this Agreement.
- (g) No failure, delay or indulgence by either You or us in exercising any power or right conferred by the Agreement on either You or us will operate as a waiver of that power or right.
- (h) If a provision of this Agreement is void or voidable or unenforceable or the invalid part severed, the remainder of this Agreement will not be affected.
- (i) You authorise us to complete any blank spaces in Your Service Order Form.
- (j) The Agreement will be governed by the laws of New South Wales, and both You and we agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from such courts.
- (k) Headings are for convenience only and do not affect interpretation.
- (l) The singular includes the plural and conversely.
- (m) A gender includes all genders.
- (n) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (o) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (p) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Agreement.
- (q) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (r) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (s) A reference to dollars and \$ is to Australian currency.
- (t) The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

## SECTION 3 – SERVICE SCHEDULES

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The following Service Schedules will be provide to you as attachments to this Standard Services Agreement:

- Hosted Voice
- Inbound & Outbound Voice
- PKI
- Network Connections
- Message Direct